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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N.NARAYAN

C.R.P.NO.472/1998

Smt.Kamalavva
w/o. Maruthi Tambadi
Age : Major
r/o. Idagatti
Taluka & Dist. : Dharwad .. Petitioner

(By Sri.Pramod Kathavi - Adv.)

- vs -

The Special Land Acquisition
Officer, N.H. 4
Dharwad .. Respondent

(By Sri.Srinivasa Reddy - HCGP)

- - - - -

C.R.P. filed u/s.115 of CPC against the
order dated 20-11-1997 passed in Ex.No.524/95
on the file of the II Addl. Civil Judge (Sr.
Dn.) Dharwad, rejecting the application filed
u/o.12 R-1 of CPC.

This C.R.P. coming on for admission this
day, the Court made the following :

ORDER

This matter coming on for admission today,
it is taken up final disposal. The reference

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Court has enhanced certain compensation deposited by the State. The State has also preferred an appeal before this Court but, failed to obtain the stay order. Therefore, the decree holder filed an application for disposal of the said amount to him and he ^{under} took to offer bank guarantee. It is on this voluntary bank guarantee that the Court released the amount in his favour. Since the Appellate Court has not granted any stay of the decree passed by the trial Court, he made another application to raise that condition. The trial Court has refused to do so on the ground that bank guarantee was offered voluntarily.

2. This Court in SANGANGOWDA - vs - SPECIAL L.A.O. U.K. PROJECT reported in 1981(2) KLJ.334 has observed that "where the decree holder applies to withdraw the amount deposited by the judgment debtor, it is not open to the executing court to impose any condition on the decree holder to offer security, merely because the judgment debtor intends to file an appeal". It is further observed in the said judgment that the executing court should not have concerned

itself in the aspect of the case. It was open to the judgmentdebtor-State to obtain stay in the appeal filed by it or proposed to be filed by it. There is no stay of the execution of the decree. The State is not aggrieved by the said condition. Therefore, the trial Court has committed an irregularity in law in rejecting the application. Therefore, the revision is allowed. The impugned order is set aside. The application filed by the decree holder to release the bank guarantee is accepted.

Sd/-
JUDGE

rs/-